

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

Case No. 18-20128

Hon. Stephen J. Murphy, III

7 D-4 MICHAL FIGURA,

8 Defendant.

9 **SENTENCING**

10 BEFORE THE HONORABLE STEPHEN J. MURPHY, III  
11 United States District Judge  
12 Theodore Levin United States Courthouse  
13 231 West Lafayette Boulevard  
14 Detroit, Michigan 48226  
15 Wednesday, December 5, 2018

16 APPEARANCES:

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EXHIBITSIdentificationOfferedReceived

NONE

1 Detroit, Michigan

2 Wednesday, December 5, 2018

3 — — —

4 (Proceedings commenced at 4:19 p.m., all parties  
5 present)

6 THE CLERK: Court calls Case No. 18-20128, United  
7 States of America versus Michal Figura.

8 Counsel, state your appearances for the record.

9 THE COURT: Okay.

10 MR. SWOR: William Swor on behalf of Mr. Figura this  
11 morning, this afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MS. RUSSO: And good afternoon, Your Honor. April  
14 Russo and Kevin Mulcahy on behalf of the United States.

15 THE COURT: Okay. Everybody may be seated.

16 MR. SWOR: Your Honor?

17 THE COURT: Yes.

18 MR. SWOR: If -- if I may.

19 THE COURT: Yes.

20 MR. SWOR: Yesterday I filed a pleading styled  
21 supplemental sentencing memorandum.

22 THE COURT: Yes.

23 MR. SWOR: It's on the ECF as Document 147.

24 THE COURT: I have it right here.

25 MR. SWOR: It was aggressive, to say the least. This

1 morning I read an e-mail from AUSA Russo responding to the  
2 assertions in my pleading, disputing them and stating her point  
3 of view.

4 Since this morning I have discussed the matter with  
5 my client, have reviewed my own documents and records, and I am  
6 no longer confident that the document that I filed is  
7 appropriate or accurately reflects the state of this case.

8 We are -- the issues, at least some of the issues,  
9 are still in dispute, but I think given the standard of an  
10 appropriate pleading in this Court, that the document is no --  
11 is not appropriate.

12 I would ask the Court to -- I'm going to file a  
13 written request, but I would ask the Court to allow me to  
14 withdraw the document, to strike it from the record, and I  
15 would apologize to AUSA April Russo for the statements made  
16 therein.

17 THE COURT: Okay. I don't have any personal problem  
18 with withdrawal of Document No. 147 ECF. That's Michal  
19 Figura's Supplemental Sentencing Memorandum. If you agree, Ms.  
20 Russo, we can do that by stipulation and I'll just order it  
21 stricken.

22 MS. RUSSO: Yes, Your Honor. And I want to thank --  
23 thank Mr. Swor for his careful attention to the matter.

24 THE COURT: Okay. All right. Thank you both for  
25 your agreement. I don't really know, I haven't delved deeply

1 into what's here and what's not here, but I will say that 147's  
2 stricken by agreement, and Mr. Parker will tell you, 'cuz he  
3 knows these things much better than I do, whether we need a  
4 written stipulation to address that matter. But either on our  
5 own or pursuant to a stipulation you write, we will strike that  
6 and I won't consider it further.

7 MR. SWOR: I think you can do it by a Text-Only  
8 Order, but...

9 THE COURT: Yeah.

10 MR. SWOR: It happens to me too many times.

11 THE COURT: All right. Very good. Mr. Figura, has  
12 and Mr. Swor read and discussed the Pre-Sentence Report,  
13 including any revisions that may have been made to it after it  
14 first came to you?

15 DEFENDANT FIGURA: Yes, Your Honor.

16 THE COURT: Okay. All right. Very good. There are  
17 objections and I think we can dispense with some of them.

18 Defense counsel denies that Mr. Figura was aware of  
19 the point system or polls. He had nothing to do with it and  
20 was unaware of the levels. The government says Figura was  
21 aware of the polls and participated in them. Probation says,  
22 "I don't know what to do. We'll refer this to the Court."

23 I'm not going to decide this unless you want to have  
24 an evidentiary hearing. It does not affect the overall offense  
25 level. I did not, as I reviewed the file, consider it in

1 preliminarily evaluating Mr. Figura's culpability. I -- I know  
2 it existed and I've seen the evidence of it as well as the  
3 discussion of it with other defendants, but I'm not going to  
4 grant or deny Objection No. 1 because it doesn't -- it doesn't  
5 go to the offense level and it can't be resolved absent a  
6 lengthy evidentiary hearing. Any --

7 MR. SWOR: Your Honor, as to all of the objections --

8 THE COURT: Yeah.

9 MR. SWOR: -- I believe none of them affect the  
10 guideline offense level.

11 THE COURT: Okay.

12 MR. SWOR: Probation has addressed them in the report  
13 and -- and accounted for them in the report.

14 THE COURT: Okay.

15 MR. SWOR: And I think we're satisfied with the  
16 Pre-Sentence Report as amended or addended [sic].

17 THE COURT: Excellent.

18 MR. SWOR: And I don't think we need to address --

19 THE COURT: All right.

20 MR. SWOR: -- those.

21 THE COURT: Then -- then I will say the following and  
22 let you react. The Objections 1 through 11 I believe have just  
23 been summarized by Mr. Swor. They are not the sort of  
24 objections that I could resolve quickly or readily, but without  
25 resolving them and noting their making, the Pre-Sentence Report

1 has been adjusted accordingly. The objections and responses  
2 will go to the Bureau of Prisons, and I think Mr. Swor's legal  
3 positions on all of them are protected. Given the fact that  
4 they do not affect the sentence guideline range in the case, I  
5 will simply acknowledge them and neither deny nor affirm them  
6 but say that there's a dispute and that the Probation  
7 Department referred them to me with their analysis.

8 Anything else on that, Mr. Swor?

9 MR. SWOR: No, sir.

10 THE COURT: Ms. Russo?

11 MS. RUSSO: Your Honor, I do actually think in the  
12 objections there's a challenge to both the vulnerable victim  
13 and the under 12 enhancement. If Your Honor were to find that  
14 both of those enhancements were not applicable, it would impact  
15 the guideline range. I believe in the Rule 11 Mr. Figura  
16 stipulated to the vulnerable victim enhancement but did not  
17 stipulate to the under 12 enhancement.

18 THE COURT: All right. First of all, I would say my  
19 ruling that I just made and Mr. Swor agreed to would address  
20 this situation simply because whether I gave the enhancement or  
21 not, he's going to be at a lifetime sentence.

22 With regard to the first one, which I believe dealt  
23 with vulnerable victims, I will credit the case file and the  
24 probation officer's response which indicates that, taking  
25 everything into account, the vulnerable victim adjustment

1 applies, but Probation did add two sentences to the end of the  
2 paragraph to reflect Figura's position.

3 Secondly, with regard to the vulnerable victim or at  
4 least the victim under the age of 12, I need not repeat myself.  
5 Everything I just said still lies. And Probation again added  
6 two sentences in that paragraph to reflect Mr. Figura's  
7 statements.

8 So I consider the Probation Office's report to be  
9 correct -- correctly written. I'll amend my earlier statement  
10 to say that I will deny the legal objections on the basis of  
11 what's written in the report and what I said earlier in  
12 response I believe to Mr. Kriger. But whatever the case may  
13 be, we're going to be starting this from a Level 43, Criminal  
14 History Category I, life sentence recommended by the  
15 guidelines. Satisfactory to all the lawyers?

16 MS. RUSSO: Yes, Your Honor.

17 MR. SWOR: Yes, Your Honor.

18 THE COURT: Okay. All right. Thank you both very  
19 much. And that is how we will address the objections in the  
20 case.

21 As I mentioned, the Offense Level is 43, the Criminal  
22 History Category is I, the advisory guideline range is life in  
23 prison.

24 The factual findings of Ms. Danysh in her report will  
25 be those of the Court for purposes of this sentencing hearing



1     only.

2                   And I'll ask both lawyers, Ms. Russo and Mr. Swor,  
3     whether or not they have any additional additions, corrections  
4     or misstatements in the Pre-Sentence Report that we haven't  
5     discussed. Mr. Swor?

6                   MR. SWOR: No, sir.

7                   THE COURT: Ms. Russo?

8                   MS. RUSSO: No, Your Honor.

9                   THE COURT: All right. Thank you both very much.

10                  Then we're ready to go to sentencing on the case, and  
11     I appreciate your hard work not only in the case overall but on  
12     the objections and their resolution as well.

13                  The victims have spoken at length. We had an hour of  
14     testimony along with some statements read by the U.S. Attorney  
15     this morning, and we also have a Victim Impact Statement that's  
16     been provided to me and all the defendants that the Court  
17     thoroughly reviewed.

18                  Restitution amount is how much, Ms. Russo?

19                  MS. RUSSO: Your Honor, it is 105,000.

20                  THE COURT: \$5,000 per victim by agreement with Mr.  
21     Swor results in a \$105,000 restitution amount in this case. If  
22     either counsel wants to debate that in allocution, they can.

23                  The Court will not impose a fine. Mr. Figura does  
24     not have the financial capability to pay one and it would be  
25     superfluous in terms of the special assessment, the restitution

1 and the \$5,000 Justice Trafficking Act enhancement that I have  
2 to by law imposed -- impose.

3 Forfeiture is not an issue in this case and there  
4 will be no final issue of forfeiture.

5 And I would now look to Mr. William Swor on behalf of  
6 his client, Michal Figura, as to any remarks he'd like to make  
7 in addition to the sentencing memorandum, Document No. 137,  
8 that was filed on November 29. I also had Mr. -- excuse me,  
9 Dr. Sugrue's report and a number of other supporting items, and  
10 I've read everything relevant to Mr. Figura and are happy to  
11 hear about your continuing argument for a variance in the  
12 sentence for this defendant. Go right ahead, Mr. Swor.

13 MR. SWOR: Your Honor, the Court has seen in both the  
14 Pre-Sentence Report and Dr. Sugrue's report the personal  
15 history of Mr. Figura and the -- the trauma that it brought to  
16 his life, the chaos that he has lived with for his entire life.

17 Having said that, from the letters the Court can see  
18 that he has earned the support and love of his family and his  
19 community. His mother has traveled here from New Jersey to be  
20 with her son. This is difficult because her English is not all  
21 that great, and I'm certain that she has struggled to  
22 understand everything that has gone on here.

23 Going back to the personal history and -- and the  
24 trauma that came with it, Mr. Figura overcame that history and  
25 put himself through school, working as a busboy, various jobs,

1 obtained not only degrees but advanced degrees.

2 He has worked since his early years and he hasn't  
3 amassed a great deal of wealth, but he has given back to the  
4 community in the ways that he could, and the Court can see from  
5 the letters that he has invested himself into the community and  
6 has been proactive about it. Not only has he helped out where  
7 needed but he looked for ways to help. He wants to be a good  
8 person. That's why he tries to help. It is the puzzle that  
9 still remains reflecting on his participation in this  
10 enterprise.

11 And I would submit to the Court that notwithstanding  
12 the characterizations by the government, that this was more of  
13 a -- passive is not the right word, but it was certainly, I  
14 think I've said before, reactive, escapism involvement. The  
15 government has indicated that this group was by invitation  
16 only. I -- I -- the government knows that better than I do.

17 And the government indicates that Mr. Figura was in  
18 the room several times a week, but it's clear that his  
19 participation was not at the level of any of the other  
20 defendants so far. He did not initiate, with one extreme  
21 exception. He did not initiate any contact with the victims.  
22 It is clear that he had no one-on-one contacts with the victim.  
23 We say he did not record. The government concedes only that  
24 they have no proof that he recorded.

25 And he fully disclosed, and this is a point of

1 contention and part of the dispute that remains between the  
2 government and myself. We -- we know from Dr. Sugrue's report  
3 that Dr. Sugrue even noted some minimization by Mr. Figura, and  
4 the government bases its argument about deception on  
5 minimization. I suspect that given the man we know him to be,  
6 that he was pretty overwhelmed and embarrassed.

7 I will tell the Court that Mr. Figura did task me  
8 with reaching out to the government to see if they were  
9 satisfied, if they wanted to talk with him further, if they had  
10 any specific questions, and there were no subsequent meetings,  
11 and that -- obviously that could be a couple of different  
12 things. One, it could be that they didn't feel it was worth  
13 it, and two, it could be that they were satisfied. I'm -- I'm  
14 not -- I don't speak for the government, I only speak for Mr.  
15 Figura.

16 The fact that he minimized or may have minimized his  
17 involvement, his behavior, whatever you would call it, however,  
18 was not significant enough that Dr. Sugrue suggested that it  
19 interfered with his ability to conduct a full evaluation. I  
20 would point out that information that Mr. Figura gave to Dr.  
21 Sugrue was information that the government used in its  
22 sentencing memorandum to make its argument. I would point out  
23 that he gave Dr. Sugrue information that the government used in  
24 making its sentencing memorandum.

25 I would also suggest that the testing that Dr. Sugrue

1 used, there's no suggestion that the testing was impaired or  
2 skewed or anything else by this historical minimization because  
3 the testing is -- is not -- it doesn't disclose what are  
4 important questions are to the -- to the testing -- the  
5 individual being tested. The -- the questions appear to be  
6 random, they're not focused. They -- they certainly don't  
7 trumpet their purpose.

8 Dr. Sugrue's finding is that likelihood of recidivism  
9 is low. Dr. Sugrue identified addiction, identified disorders,  
10 identified the need for therapy, and Mr. Figura acknowledges  
11 his -- his need for therapy. He has told -- consistently told  
12 us since day one when he was still in Philadelphia, locked up  
13 there, that he tried to get help, he -- but he was made aware  
14 of the fact that any healthcare professional that he confided  
15 in would have to report him and report the conversation to the  
16 authorities, and -- and Mr. Ortega gave us very brave words  
17 about doing that. But I think that the -- the cataclysmic  
18 consequences of such an action are certainly a rational  
19 deterrent. And now, as Dr. Sugrue noted and as Mr. Figura has  
20 agreed, that now there's nothing to stop him from getting the  
21 treatment and the therapy that he needs.

22 THE COURT: Yeah.

23 MR. SWOR: Mr. Figura has always admitted that this  
24 was wrong, that this was not normal. Fortunately, Dr. Sugrue  
25 says that the testing reveals no evidence of pedophilia.

1           The remaining issue with regard to that is the  
2 government's comment that Mr. -- Mr. Figrue [sic] -- Figura has  
3 no empathy for his victims, and we disagree with that most  
4 fervently. I believe that Dr. Sugrue's report makes it clear  
5 that the statements attributed by the government were only part  
6 of the statement and it was a historical rationalization, and  
7 that Mr. -- Mr. Figura clearly understands that that  
8 rationalization is wrong. He is culpable, responsible. He  
9 accepts that. There is no excuse for it. There's no  
10 minimization of it, objectively or otherwise.

11           He's not going to see his children grow up except  
12 from a distance. Someone called that the -- the ironic  
13 punishment, I think it was Mr. Kriger, that his children's  
14 childhood will be taken away from him as this group robbed  
15 others of theirs.

16           Your Honor, I believe that no matter what, the facts  
17 do not warrant a sentence for Mr. Figura above the mandatory  
18 minimum. I would ask you to impose a sentence at the mandatory  
19 minimum of 240 months.

20           I -- I have some comments about the financial  
21 responsibility program. Do you want them now or --

22           THE COURT: Sure.

23           MR. SWOR: -- later?

24           THE COURT: Mm-hmm. Go ahead.

25           MR. SWOR: I -- I -- I'd ask the Court not to impose

1 the federal -- the Inmate Financial Responsibility Program upon  
2 him. The Court has already made a finding that he doesn't have  
3 resources. And one of the problems of the Inmate Financial  
4 Responsibility Program is that it does not simply take a  
5 portion of his earnings and set it aside.

6 THE COURT: Right.

7 MR. SWOR: But they take his commissary, they take a  
8 significant portion of his commissary, they take a significant  
9 portion of -- of anything that his family might send him, and  
10 things in prison are expensive and it's going to be hard  
11 getting along even as it is.

12 THE COURT: Okay.

13 MR. SWOR: And -- and so I -- I'd ask the Court to  
14 allow it to be paid after he's discharged from custody.

15 THE COURT: Okay.

16 MR. SWOR: Also for the benefit of his family, his  
17 wife and children, we would ask the Court to consider  
18 designating him in the following order or recommend  
19 designation: FCI Fairton, F-a-r -- F-a-i-r-t-o-n, FCI Otisville  
20 and FCI Allentown. Failing that, we would ask the Court to  
21 designate him to an institution that has the intensive program  
22 such as McKean.

23 THE COURT: Okay. All right. Great. McKean is in  
24 Pennsylvania.

25 MR. SWOR: McKean is in western Pennsylvania. It's

1 about five hours from Philadelphia.

2 THE COURT: Okay. All right. All right. Very good.  
3 Thank you very much, Mr. Swor, for those compelling and well  
4 thought remarks.

5 I now would like to turn to the client, Mr. Figura,  
6 and say to you, sir, you have the opportunity to speak to the  
7 Court on your own behalf and to say anything in addition or in  
8 concert with what your lawyer said, and you go right ahead.

9 DEFENDANT FIGURA: Thank you, Your Honor.

10 In addition to my letter to the Court, I just would  
11 like to make this short statement. What I did was wrong and  
12 reprehensible. I take full responsibility for my actions. The  
13 fact that I have an addiction is not -- is an explanation but  
14 not an excuse. As I sit here and listen to the victims'  
15 statements, I am even more ashamed and -- and more embarrassed.  
16 I'm sorry.

17 THE COURT: Okay. Thank you very much, sir. I  
18 appreciate those sincere remarks.

19 On behalf of the United States.

20 MS. RUSSO: Thank you, Your Honor.

21 Your Honor, I'll incorporate the arguments in the  
22 government's sentencing memorandum, and -- and you've  
23 incorporated already the Victim Impact Statements in this  
24 matter.

25 When it comes to Mr. Figura, Your Honor, I think his



1 story and the recommendation here were -- are a little bit more  
2 of a complicated story. And the government did end up  
3 recommending 35 years for Mr. Figura which is at the bottom of  
4 the sentencing recommendations. And the reason for that, Your  
5 Honor, were the mitigating factors for Mr. Figura: that he --  
6 that he wasn't a hunter, that he was only a talker. That even  
7 when he was a talker, he wasn't active in every single  
8 conversation through the duration of the time that he was on  
9 Website A and these other websites.

10 And, Your Honor, we don't have any evidence that he  
11 recorded, defense is absolutely right about that.

12 On the other hand though, Your Honor, for Mr. Figura  
13 the government had concerns that didn't exist necessarily for  
14 some of the other offenders. There's things about Mr. Figura  
15 that stood out, one being, Your Honor, that Mr. Figura engaged  
16 in this sort of activity, collecting child pornography at  
17 least, since his adolescence, longer than any other offender  
18 here that we've sentenced so far, Your Honor, and that we will  
19 sentence tomorrow as far as the government knows.

20 And, Your Honor, the defendant engaged in this  
21 activity for hours every -- five days a week by his own  
22 admission. And according to him, he couldn't fall asleep  
23 without engaging in masturbation, Your Honor. But in addition  
24 to that he said that at some point looking at adult pornography  
25 became insufficient to get him to the level of arousal such

1 that he could engage in masturbation so that the only way he  
2 could fall asleep then was to engage in this activity by  
3 viewing child pornography.

4 So when we look at the level of Mr. Figura's  
5 addiction, Your Honor, I don't know that there's another  
6 defendant that we are sentencing in this case that has -- can  
7 even compare in terms of the level of addiction to this sort of  
8 content.

9 Of course, Your Honor, he also did have child  
10 pornography of toddlers. He was in this group from the very  
11 beginning, from 2012. He visited certain chatrooms on Website  
12 A that are very concerning, like "blackmailcapper" and  
13 "cryingandfun." And he had 6,122 visits to Website A from the  
14 time that we first obtained logs from this website, and through  
15 the month before his arrest he was still frequenting Website A,  
16 Your Honor, and frequenting rooms associated with minor  
17 victims. And so when it comes to that conduct, Your Honor,  
18 it's very concerning to the government.

19 And that's why we ended up, although we think that  
20 conduct is concerning enough to warrant a higher sentence, when  
21 we look at the mitigation, when we look at the fact that he  
22 wasn't a hunter, he didn't serve in multiple roles in the group  
23 and he didn't record, we end up at 35 years.

24 Now, I don't want to minimize the things that he did  
25 say to these girls because although he wasn't always as active

1 of a participant in the chats as some of the other offenders,  
2 when he was active he was extremely graphic. He was just as  
3 graphic as any of the other ones. He told girls to take off  
4 their clothes, he asked them how many fingers they were going  
5 to use to engage in sexual activity, and he asked them to  
6 obtain other objects to engage in the activity other than their  
7 fingers. And those are just some examples, Your Honor.

8 And so then when it comes to the history and  
9 characteristics of the offender, we look at Dr. Sugrue's  
10 report, and I believe his report is very helpful. The defense  
11 says Dr. Sugrue said that he was a low risk of recidivism.  
12 I -- I disagree slightly with that because on the VRTs, Dr.  
13 Sugrue found that he was a medium risk for recidivism.

14 And on the other test that Dr. Sugrue performed, I  
15 believe he performed a Static-99R and a Stable-2007, and one of  
16 those, the Static-99R, which is the only predictor of  
17 recidivism other than the VRT that he used, he found him to be  
18 a low to moderate risk.

19 The other thing that was interesting about Dr.  
20 Sugrue's report and that I've been puzzling over since I saw it  
21 is that when he did the PCL-R test, the Hare Psychopathy test,  
22 on page 13 of his report for Mr. Figura he talks about this,  
23 and he says that when he compared Mr. Figura's score to other  
24 offenders, he was -- to other sex offenders, he was 99 -- oh,  
25 to other criminals, he was 99 percent -- 99 percent showed a

1 stronger sign of psychopathy than Mr. Figura. But then he  
2 says, "On the other hand, when compared to a sample of  
3 non-criminal, non-psychiatric undergrads, his score placed him  
4 at the 34th percentile."

5 And what was interesting about this to me, Your  
6 Honor, is that when I looked at the other evaluations that Dr.  
7 Sugrue has done of the other defendants in this case, Mr.  
8 Simpatico and Mr. Rodriguez being the other two, Mr. Simpatico,  
9 his score, when compared to these non-criminal, non-psychiatric  
10 undergrads placed him in the 81th percentile and Rodriguez's  
11 was 75 percent, Your Honor. So that would be an indicator that  
12 Mr. Figura scores dramatically different from these other two  
13 offenders that are in this group and dramatically different  
14 in -- in not a positive way. But I don't really understand  
15 the -- the -- the analysis here because of the first --

16 THE COURT: You're -- you're -- you're -- you're  
17 delving too deeply.

18 MS. RUSSO: Yes, Your Honor.

19 THE COURT: Okay. Get -- get to the point please.

20 MS. RUSSO: Yes, Your Honor. My -- my point was only  
21 that that's concerning that there's this dramatic difference  
22 between this offender and the other offenders, and I didn't  
23 know if perhaps that is because this offender's addiction is so  
24 much more pervasive than the other -- some of the other  
25 offenders in this case, given that --

1 THE COURT: Well, we're not punishing him for  
2 addiction, right? You've gone on for like ten minutes about  
3 recidivism, right? I mean it's likely he's going to recidivate  
4 for the next 30 years. So why don't we talk about whether or  
5 not 30, 35, 40 or 45 years is appropriate. You said 35 is and  
6 I respect that.

7 MS. RUSSO: Yes, Your Honor. We think 35 years is  
8 necessary to protect the public given all the facts that I just  
9 stated.

10 THE COURT: All right. Anything else?

11 MS. RUSSO: No, Your Honor.

12 THE COURT: Okay. All right.

13 MR. SWOR: Briefly, Your Honor.

14 THE COURT: What? What -- what could you possibly  
15 say?

16 MR. SWOR: Okay. Pages 13 and 14, same report, the  
17 last sentence: "Mr. Figura does not display evidence of  
18 psychopathy nor a high risk for future dangerous criminal  
19 behavior."

20 THE COURT: All right.

21 MR. SWOR: Page 17, "As reported earlier, when  
22 considering stable and statistic -- static and stable factors,  
23 Mr. Figura falls in the low range."

24 THE COURT: All right.

25 MR. SWOR: All right. Your Honor, I think the

1 mandatory minimum is sufficient and we urge the Court.

2 THE COURT: Okay. I appreciate it very much from  
3 both sides.

4 I think that any individual who suffers a 20-, 30- or  
5 35-year sentence who goes back and does the same things again  
6 after that amount of time and the consequences of this type of  
7 conviction would be irrational. Maybe Mr. Figura is, maybe  
8 he's not, but we'll give him a good long term of supervised  
9 release to assess where he's at after the prison term punishes  
10 and hopefully deters his behavior.

11 All right. No criminal convictions. Solid  
12 educational background. Strong support from the family,  
13 especially the mother. The household was chaotic. Dad was  
14 absent. Corporal punishment made it very tough for this man  
15 and his brother. His mother remarried. He came from Poland  
16 and had a tough time, not that we would expect people to get  
17 involved in criminal activity of this nature. Addictive  
18 behavior or other serious conduct of that sort. We see this  
19 time and time again.

20 The sad fact of the matter is what Mr. Figura did not  
21 get as a child led him into a secretive and incredibly  
22 destructive habit of criminality that destroyed his victims in  
23 many cases, will certainly destroy his family, and shockingly  
24 takes him away from a marriage with a woman who seems to still  
25 be supportive of him, two children, Master of Science in

1 computers and steady employment.

2 I agree with Ms. Russo that some of the conduct here  
3 takes him out of the heartland of the most culpable. He  
4 appeared to have been a, quote, "talker," close quote, which  
5 means that he was not hunting, looping or coercing young girls  
6 to join these groups.

7 He did not, from everything I was able to read,  
8 record his victims. And Mr. Swor makes a compelling case that  
9 I believe of him being in and out of the group probably because  
10 guilt, disgust and he knew what he was doing, but Dr. Sugrue  
11 says himself he kept going back to it.

12 How do you sentence such a man? Well, I believe a  
13 custodial sentence is warranted to punish the behavior, to  
14 address the severe psychological consequences that were visited  
15 in society by the effect we've seen on the victims, and to  
16 hopefully deter this man from doing it again or other people  
17 from picking up the computer keyboard and getting involved in  
18 such things.

19 I believe the circumstances of the offense, the  
20 statutory custodial minimum, the rehabilitation opportunities,  
21 that he, along with Mr. Sinta who I spoke about earlier, should  
22 suggest a -- a sentence around but slightly in excess of  
23 360 months.

24 Therefore, pursuant to the Sentence Reform Act of  
25 1984, the Court, having considered the sentence guidelines and

1 factors contained in 18 USC, Section 3553(a), hereby commits  
2 the defendant Michal Figura to the custody of the U.S. Bureau  
3 of Prisons for a term of 315, that's 3-1-5, months.

4 It's further -- no, I'm sorry, that's a mistake.  
5 375 months. I will commit Michal Figura to the custody of the  
6 U.S. Bureau of Prisons for a term of 375 months. That is  
7 31 years and a quarter.

8 It's further recommended that the defendant be  
9 designated to an institution with a comprehensive sexual  
10 offender treatment program primarily. If that's available at  
11 McKean, I think that would be the best place. Alternatively,  
12 Fairton and Otisville would accommodate him and keep him close  
13 to his wife and children who I believe he ought to have contact  
14 with.

15 Upon release from imprisonment, the defendant shall  
16 be placed on a supervised release term of five years.

17 The defendant must pay a special assessment of a  
18 hundred dollars. That will be due immediately.

19 And he must pay the Justice for Victims of  
20 Trafficking Fund an assessment of \$5,000 due immediately as  
21 well.

22 Restitution in the amount of \$5,000 per identified  
23 victim, or \$105,000, will be ordered.

24 No interest, penalties and fees may accrue on any of  
25 these financial penalties.



1           No fine, no costs of incarceration, the costs of  
2 supervision are all waived due to the defendant's lack of  
3 financial resources.

4           I appreciate your request, Mr. Swor, but having  
5 deliberated on it and in all candor, I must tell you that I  
6 think the Inmate Financial Responsibility Program in a case  
7 where there is financial obligations is very important. I did  
8 not know until today and I understand now from your comments  
9 that it can be harsh in some semblance. All I can say is that  
10 Mr. Figura should -- should act accordingly to alleviate the  
11 harshness of the program, but I think paying some money toward  
12 the special assessments and restitution amounts is very, very  
13 important while in custody.

14           Therefore, he shall participate in the Inmate  
15 Financial Responsibility Program. I'm aware of its  
16 requirements, as I just mentioned, and I approve the payment  
17 schedules of the program and will hereby order the defendant's  
18 compliance.

19           Mandatory drug testing is suspended based on the  
20 Court's determination that the defendant poses a low risk of  
21 future substance abuse.

22           While on supervision, Mr. Figura must abide by the  
23 standard conditions adopted by the Court, and he has to comply  
24 with all 15 of the special conditions verbatim laid out and  
25 read into the record by the Court in the initial sentencing

1 hearing today five and a half hours ago with Mr. -- with Mr.  
2 Maire.

3 That will be the sentence of the Court. Are there  
4 objections to it you'd like to lodge, Ms. Russo?

5 MS. RUSSO: No, Your Honor.

6 THE COURT: Mr. Swor?

7 MR. SWOR: Your Honor, would the Court consider  
8 suspending the Inmate Financial Responsibility once the special  
9 assessments are paid?

10 THE COURT: What --

11 MS. RUSSO: Your Honor, I would object to anything  
12 like that. You heard the victims. You heard that they can't  
13 afford to pay their therapy bills and they have therapy dogs  
14 they have to pay for every month.

15 THE COURT: I -- I -- I -- I won't do that now but  
16 I'm very open minded, and if a legal brief and a discussion of  
17 the program along with the inability or -- or -- or -- or lack  
18 of fairness in complying with it under the law, along with a  
19 full payment, would support discharge from it, I'd be open --  
20 open to amending the judgment.

21 I wonder if that isn't -- I wonder if that isn't part  
22 of the Bureau of Prisons' oversight of an inmate, but I would  
23 certainly never foreclose or preclude a post-judgment motion  
24 seeking relief from the program if circumstances and law  
25 justify it, okay?

1 Any other objections or anything else you'd like to  
2 say, Mr. Swor?

3 MR. SWOR: No, sir.

4 THE COURT: All right. Thank you very much. The  
5 sentence that I just stated will be imposed.

6 The defendant has waived the right to appeal his  
7 sentence and his conviction as part of his Plea Agreement.  
8 Those waivers, Mr. Figura, are usually enforceable. If you  
9 believe yours is not, you can present that to the U.S. Court of  
10 Appeals.

11 The defendant will be remanded to the custody of the  
12 marshal for continued service of his sentence.

13 Both parties have copies of the Pre-Sentence Report.  
14 Amended copies will be sent to the Bureau of Prisons and the  
15 Sentencing Commission.

16 That is it from here. Anything else from the United  
17 States?

18 MS. RUSSO: Your Honor, we'll dismiss the remaining  
19 counts in the indictment at this time.

20 THE COURT: Okay. Upon motion and without objection,  
21 I will sign a Judgment and Commitment Order dismissing the  
22 remainder of the indictment counts against Mr. Figura. There's  
23 no objection to that obviously.

24 And we will now be in recess until 9:00 a.m. tomorrow  
25 morning when we will hear from Mr. Walton and Mr. Young and

1 close out sentencing in this case, all right? Thank you all  
2 very much --

3 MR. SWOR: Thank you, Your Honor.

4 THE COURT: -- and have a pleasant evening.

5 THE CLERK: All rise. Court is now in recess.

6 (Court in recess at 5:06 p.m.)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 28 comprise a full, true and correct transcript of the proceedings held in the matter of United States of America vs. D-4 Michal Figura, Case No. 18-20128, on Wednesday, December 5, 2018.

s/Linda M. Cavanagh  
Linda M. Cavanagh, RDR, RMR, CRR, CRC  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: March 5, 2020  
Detroit, Michigan